

Chapter 24.42

REGULATION OF PROPERTY TRANSFERS WITH ON-SITE SYSTEMS

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24.42.010 Purpose.

The City Council finds that properly planned, constructed, installed, operated and maintained on-site water supply systems and on-site wastewater treatment systems:

- (a) Promote the health and welfare of the citizens of the City by preventing the pollution of ground and surface water;
- (b) Prevent nuisances;
- (c) Eliminate hazards to the public health by minimizing pollution of water supplies and hazards to recreational areas;
- (d) Minimize disease transmission potential; and
- (e) Minimize economic impact to the city and the public resulting from on-site water system and on-site wastewater treatment system failures.

It is therefore, declared to be the public policy of the City to ensure a safe and adequate supply of drinking water for those homes served by an on-site water supply system, ensure the adequate treatment and disposal of sewage from premises served by an on-site wastewater treatment system and eliminate and prevent health and safety hazards by regulating the operation and maintenance of on-site water supply systems and on-site wastewater treatment systems, requiring permitting of those who inspect on-site systems; and providing penalties for violations.

The intention of this ordinance is not to cause existing permitted on-site systems that are in substantial conformance (pose a minimal likelihood of degradation of groundwater or surface water,

or risk to public health) to be brought into compliance with Chapter 24.38 of the Lincoln Municipal Code (On-site Wastewater Treatment Systems), as amended, and Chapter 4.10 of the City of Lincoln Design Standards (Design Standards, Operation and Maintenance of On-site Wastewater Treatment Systems), as amended. (Ord. 18693 §1; March 27, 2006).

24.42.020 Definitions.

Definitions for purposes of this chapter shall include definitions provided in Chapter 24.38 of the Lincoln Municipal Code and the Design Standards for the Operation and Maintenance of On-Site Wastewater Treatment Systems, and shall also include the following:

AUTHORIZED AGENT shall mean a real estate agent, Property Transfer Inspector, or any individual or corporation authorized, in writing, to act as the legal representative in all matters authorized by the owner.

BUSINESS DAY shall mean any day, Monday through Friday, except official City holidays or a day during which the City does not operate for any reason.

FAILURE OF AN ON-SITE WATER SUPPLY SYSTEM shall mean (1) an unsafe water sample; (2) substantial nonconformance with water well construction requirements in Title 178 NAC 12; (3) substantial nonconformance with water well location from contamination source requirements in Title 178 NAC 12.

ON-SITE SYSTEM (OS) shall mean an On-site Wastewater Treatment System (OWWTS) and/or an On-site Water Supply System (OWSS).

ON-SITE WATER SUPPLY SYSTEM (OWSS) shall mean a private or shared well for domestic purposes.

OWNER shall mean any person who is an owner of record or a trustee under a deed of trust or similar trust document.

PROPERTY TRANSFER INSPECTOR shall mean any person meeting the requirements of a Property Transfer Inspector pursuant to this chapter and possessing a valid permit issued by the Lincoln-Lancaster County Health Director.

PUMPER shall mean a person that is certified by the Nebraska Department of Environmental Quality under Title 124 NAC as an On-site Wastewater Treatment System Professional in the category of Pumper.

TITLE 124 NAC shall mean the Nebraska Administrative Code Title 124 (Nebraska Department of Environmental Quality Title 124 - Rules and Regulations for the Design, Operation and Maintenance of On-site Wastewater Treatment Systems).

TITLE 178 NAC 10 shall mean the Nebraska Administrative Code Title 178 Chapter 10 (Nebraska Department of Health and Human Services Title 178 Environmental Health, Chapter 10 - Regulations Governing Licensure of Water Well and Pump Installation Contractors and Certification of Water Well Drilling and Pump Installation Supervisors, and Water Well Monitoring and Natural Resources Ground Water Technicians).

TITLE 178 NAC 12 shall mean the Nebraska Administrative Code Title 178 Chapter 12 (Nebraska Department of Health and Human Services Title 178 Environmental Health Chapter 12 - Water Well Construction, Pump Installation and Water Well Decommissioning Standards).

TITLE 179 NAC 3 shall mean the Nebraska Administrative Code Title 179 Chapter 3 (Nebraska Department of Health and Human Services Title 179 Public Water Systems Chapter 3 - Monitoring and Analytical Requirements).

UNSAFE WATER SAMPLE shall mean a water sample which tests positive for coliform bacteria, or exceeds 10 mg/l Nitrate-Nitrogen, or which exceeds the Maximum Contaminant Level

(MCL) for any other contaminant as established by the U.S. Environmental Protection Agency or Nebraska Department of Health and Human Services for a public water supply. (Ord. 18693 §2; March 27, 2006).

24.42.030 Inspection Required; Exceptions.

Prior to the sale, transfer or conveyance of property upon which an OS is located, it shall be the duty of the owner to have each OS inspected pursuant to this chapter by a Property Transfer Inspector and secure a determination letter as provided in Section 24.42.070. An inspection is not required for the following:

(a) When a determination letter approving an OS was issued within the preceding 36 months of the transfer.

(b) When a new OS was installed in compliance with Chapter 24.38 of the Lincoln Municipal Code and Chapter 4.10 of the City of Lincoln Design Standards within the preceding 36 months of the transfer.

(c) A transfer creating or ending a joint tenancy or tenancy in common if at least one person is an original owner of the property or his or her spouse, including a transfer from one spouse to another, or a change in ownership solely to exclude a spouse.

(d) Where structures on the property will not be occupied and are to be demolished after property is sold, transferred, or conveyed.

(e) A transfer to establish, release, or foreclose a security interest.

(f) A transfer by intestate, will, or trust to an heir, devisee, or beneficiary.

(g) A transfer by warranty deed or quitclaim deed between immediate family members, including parents, grandparents, grandchildren, siblings, and children (including adopted children and stepchildren). (Ord. 18693 §3; March 27, 2006).

24.42.040 Inspection of On-site Wastewater Treatment Systems (OWWTS).

(a) An inspection of an OWWTS by a OWWTS Property Transfer Inspector shall consist of determining compliance with Chapter 24.38 of the Lincoln Municipal Code, Chapter 4.10 of the City of Lincoln Design Standards, Title 124 NAC, and the following:

(1) The septic tank shall be inspected to determine the depth of the sludge layer and scum layer; and

(2) The soil absorption field shall be visually inspected for signs or evidence of failure; and

(3) The soil absorption field shall be probed to determine the location of laterals and to check for excess effluent.

(b) An inspection of a wastewater lagoon by an OWWTS Property Transfer Inspector shall consist of determining compliance with Chapter 24.38 of the Lincoln Municipal Code, Chapter 4.10 of the City of Lincoln Design Standards, Title 124 NAC, and the following:

(1) The dike shall be inspected for the presence of animal burrows, damage, cracks or crevices, and evidence of wastewater lagoon overflow or over-the-ground surface water inflow; and

(2) The wastewater lagoon shall be inspected for the presence of cattails, other emergent plants, and trees that might damage the wastewater lagoon seal or dike construction. (Ord. 18693 §4; March 27, 2006).

24.42.050 Inspection of On-site Water Supply Systems (OWSS).

- (a) An inspection of an OWSS by a OWSS Property Transfer Inspector shall consist of:
 - (1) Determining compliance with Title 178 NAC 12; and
 - (2) Taking water samples from the OWSS and having such water samples analyzed for coliform bacteria, fecal coliform bacteria and Nitrate-Nitrogen to determine compliance with Title 179 NAC 3.
- (b) Further water analysis may be required by the Health Director in cases of unsafe water samples, or in areas known or suspected to have contamination which could impact human health. Analysis may include testing for organic or inorganic chemicals. All such sampling and analysis shall be in compliance with Title 179 NAC 3. (Ord. 18693 §5; March 27, 2006).

24.42.060 Inspection Reports; Requirements.

- (a) The Property Transfer Inspector shall submit to the Department a signed property inspection report on forms approved by the Health Director. Inspection reports shall include, but are not limited to:
 - (1) The street address and the legal description of the property.
 - (2) The parcel identification number.
 - (3) The name of the owner or authorized agent.
 - (4) The location of the OS.
 - (5) Proximity to sources of contamination.
 - (6) A description of the current operational or functional status of the OS.
 - (7) Identification of any necessary repairs or replacement of all or portions of the OS.
 - (8) Results of the OWSS water analysis, where applicable.
 - (9) Other relevant observations related to the system(s), and potential health or environmental hazards, or nuisance conditions.
 - (10) Signature of Property Transfer Inspector.
- (b) In the event that a complete inspection of the OWWTS cannot occur prior to the sale, transfer, or conveyance of property due to inclement weather conditions, the Property Transfer Inspector shall submit to the Health Director a signed written statement indicating what elements of the inspection could not be completed.
- (c) The Property Transfer Inspector shall provide a copy of the inspection report to the owner or authorized agent.
- (d) The inspection report filed with the Department shall be considered a public record. (Ord. 18693 §6; March 27, 2006).

24.42.070 Review of Inspection Report by Health Director; Determination Letter.

- (a) Upon receipt of an inspection report and review fee, the Health Director will:
 - (1) Document the day of receipt of the inspection report.
 - (2) Review and evaluate the inspection report.
 - (3) Provide a written or electronic determination letter to the owner or authorized agent within five (5) business days after receipt of the inspection report and review fee. The determination letter will issue:
 - (i) The approval of the OS to mean the structure and operational status are in substantial conformance with Chapter 24.38 of the Lincoln Municipal Code, Chapter 4.10 of the City of Lincoln Design Standards, Title 124 NAC and/or Title 178 NAC 12; or

(ii) The denial of the OS to mean the OS adversely affects or may adversely affect the public health and/or the environment; or

(iii) An inability to approve or deny the OWWTS based upon receipt of a signed written statement from a Property Transfer Inspector indicating that an inspection could not be completed due to weather conditions.

(b) The owner or authorized agent is considered notified of the determination letter when the Health Director sends it by U.S. mail to the owner's or authorized agent's last known mailing address.

(c) If the owner or authorized agent disputes the Health Director's determination, the owner or authorized agent shall have the right to a hearing and appeal as provided in this chapter. A hearing or appeal does not stay the effect of the Health Director's determination. (Ord. 18693 §7; March 27, 2006).

24.42.080 Inspections and Enforcement; Right of Entry.

(a) The Health Director is hereby authorized and directed to make such inspections as are necessary to determine compliance with this chapter.

(b) Upon presentation of proper credentials the Health Director may enter at reasonable times any building, structure, or property in the city to determine compliance with the requirements of this chapter. It shall be unlawful for any owner or occupier of the property or person in charge of the property to deny right of entry to the Health Director to make such inspection. (Ord. 18693 §8; March 27, 2006).

24.42.090 Property Transfer Inspector Permit; Requirements.

(a) Application for a permit for a Property Transfer Inspector shall be made to the Health Director on forms furnished by the Health Director. Such forms shall require the name, address, business address, daytime phone number of the applicant, which permit the applicant is applying for, and such other relevant information as may be required by the Health Director. The applicant shall complete the required forms.

(b) A Property Transfer Inspector may be permitted in two categories: On-site Water Supply Systems (OWSS) and/or On-site Wastewater Treatment Systems (OWWTS).

(1) OWSS Property Transfer Inspector. A person shall be certified in the State of Nebraska under Title 178 NAC 10 as a Water Well Contractor, a Water Well Drilling Supervisor, a Pump Installation Contractor or a Water Well Monitoring Technician.

(2) OWWTS Property Transfer Inspector. A person shall be certified by the State of Nebraska under Title 124 NAC as a Site Evaluator or Inspector, shall be a Journeyman Installer or Master Installer under Chapter 24.38 of the Lincoln Municipal Code.

(c) The applicant shall be required to take a Property Transfer Inspector training program and the Property Transfer Inspector Exam. Both the training program and exam must be approved by the Health Director.

(d) The Health Director shall issue a permit if:

- (1) The applicant has properly completed the required application forms; and
- (2) The applicant possesses the required certification requirements for the permit; and
- (3) The applicant has paid the required permit fee; and
- (4) The applicant has provided proof insurance meeting the requirements of this chapter; and

(5) The applicant has satisfactorily completed the training program and passed the exam.

(6) The applicant agrees to supplement all pertinent information, including applicant's address, business address, phone number, and such other information as the Health Director requires.

(e) The permit shall remain in force for two (2) years from its date of issue, unless suspended or revoked. The permit may be renewed without an exam, by paying the required fee, and providing documentation of required certification. Any person who does not renew their permit prior to or on the date of expiration shall complete a new permit application, pay the required fee, and pass the exam.

(f) Any person whose application for a Property Transfer Inspector permit has been denied by the Health Director shall be notified in writing as to the denial. Such person may within ten (10) business days after receipt of denial request a hearing before the Health Director to be held in compliance with this chapter. (Ord. 18693 §9; March 27, 2006).

24.42.100 Certificate of Insurance.

(a) Before any Property Transfer Inspector may be issued, a permit under the provisions of this chapter, such Property Transfer Inspector shall be required to purchase and maintain a policy of insurance sufficient in coverage and amount to fully satisfy any judgments and pay any and all liabilities, judgments, claims, and related expenses that may arise in connection with services provided under the provisions of this chapter. At a minimum, such insurance shall include:

(1) Workers' Compensation Insurance fully insuring its employees as required by law. Said insurance shall be obtained from an insurance company which is authorized to do business in the State of Nebraska.

(2) Commercial or Comprehensive General Liability Insurance, naming and protecting the Property Transfer Inspector, City of Lincoln, and the Lincoln-Lancaster County Health Department against claims for damages resulting from (i) bodily injury, including wrongful death; (ii) personal injury liability; and (iii) property damage which may arise from services provided under the provisions of this chapter. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

\$1,000,000 Each Occurrence

\$1,000,000 Personal Injury

\$2,000,000 Aggregate

(b) All Certificates of Insurance shall be subject to review and approval by the City Attorney's Office. All Certificates of Insurance shall be filed with the Health Department on the standard ACCORD Certificate of Insurance form showing the specific limits of insurance required by the preceding subsections A and B, and showing the City of Lincoln and Lancaster County as additional insured. Such certificate shall specifically state that insurance policies are to be endorsed to require the insurer to provide the City of Lincoln, Lancaster County, and the Health Department with thirty (30) days notice of cancellation, non-renewal or any material reduction of insurance coverage. Any termination, reduction, or lapse of such insurance shall be grounds for suspension or revocation of the Property Transfer Inspector's permit, unless other insurance satisfying the requirements of this section is provided and is in full force and effect at the time of such expiration or cancellation. (Ord. 18693 §10; March 27, 2006).

24.42.110 Fees.

- (a) Fee for evaluation and review of Property Transfer
Inspector reports and any necessary site visits by Health Director \$75.00
- (b) Property Transfer Inspector permit fees:
 - On-site Wastewater Treatment System
(OWWTS) Property Transfer Inspector \$20.00
 - On-site Waste Supply System (OWSS)
Property Transfer Inspector \$20.00
 - Both OWWTS & OWSS \$30.00

All fees are payable to the Lincoln-Lancaster County Health Department and shall be credited to the Health Fund. No fees will be refunded. (Ord. 18693 §11; March 27, 2006).

24.42.120 Property Transfer Inspection; Permit Required.

It shall be unlawful for any person other than a Property Transfer Inspector or an authorized representative of the Health Director that is currently a Registered Environmental Health Specialist in the State of Nebraska to inspect any OS prior to transfer, sale or conveyance of property as required by this chapter. (Ord. 18693 §12; March 27, 2006).

24.42.130 Property Transfer Inspector Permit; Suspension, Revocation.

It shall be a condition of the Property Transfer Inspector permit issued under this chapter that it may be suspended or revoked at any time by the Health Director for a violation of Title 124 NAC, Title 178 NAC 10, Title 179 NAC 3, or any of the provisions of this chapter. A permit granted under this chapter shall be subject to suspension or revocation in the following manner:

- (a) The Health Director shall notify the person holding the Property Transfer Inspection Permit to be suspended or revoked as provided in Section 24.42.160.
- (b) The Health Director may suspend the permit for an appropriate period of time not to exceed 90 days.
- (c) The suspension or revocation shall be effective immediately upon notice.
- (d) This person has a right to a hearing in which the Health Director shall conduct the hearing in accordance with this chapter.
- (e) It shall be unlawful to inspect an OS after receiving notice of suspension or revocation.
- (f) Actions for reinstatement, hearing, or appeal shall not stay or delay the suspension or revocation in any manner. (Ord. 18693 §13; March 27, 2006).

24.42.140 Property Transfer Inspector Permit; Reinstatement of Permit.

- (a) Any person whose Property Transfer Inspector Permit has been suspended may apply to have the permit reinstated after the suspension period has expired. The person shall pass the exam and provide a statement signed by the person that the conditions causing suspension of the permit have been corrected.
- (b) Any person whose Property Transfer Inspector Permit has been revoked may apply for a new permit after 90 days. The person shall complete a new permit application, pay the required

fee, pass the exam, and provide a statement signed by the person that the conditions causing revocation of the permit have been corrected. (Ord. 18693 §14; March 27, 2006).

24.42.150 Enforcement Hearings.

(a) Unless this chapter provides otherwise, the Health Director shall conduct hearings allowed or required under this chapter as soon as practicable, but in no event later than:

(1) Three business days after a request for hearing to appeal a permit suspension or revocation; or

(2) Five business days after any other request; or

(3) At an agreed upon time frame if such is requested by the person for whom the hearing is being held.

(b) The Health Director shall make recommendations based on the evidence adduced at the hearing for the Health Director's final determination of the matter.

(c) The hearing need not be conducted according to the technical rules relating to evidence and witnesses. The person requesting the hearing and the Health Director may:

(1) Call and examine witnesses on any matter relevant to the issues of the hearing;

(2) Introduce documentary and physical evidence;

(3) Cross examine opposing witnesses on any matter relevant to the issues of the hearing; and

(4) Rebut evidence.

(d) The Health Director may uphold, reverse, or modify the act or findings prompting the request or the Health Director may take such other reasonable action as the Health Director may determine proper related to the request.

(e) The Health Director shall make a final determination within ten (10) business days after the hearing.

(f) The Health Director's decision shall be final and binding upon the City and upon the person making the request. The Health Director's decision may be appealed to the district court as provided by state law. (Ord. 18693 §15; March 27, 2006).

24.42.160 Notice; Service.

(a) The Health Director may serve notice authorized or required by this chapter as follows:

(1) By personal service to the person holding the Property Inspector Permit; or

(2) By certified mail, postage prepaid, return receipt requested to the last known address of the person holding the Property Inspector Permit.

(b) The person making personal service may provide a written declaration, under penalty of perjury, identifying the person served and the time, date, and manner of service as proof of service.

(c) After a request for a hearing, the Health Director shall provide notice of the time, place and date for said hearing and shall identify the provisions of this chapter alleged to be violated and the facts alleged to constitute such violation. (Ord. 18693 §16; March 27, 2006).

24.42.170 Penalty.

Any person who is found to have violated any provision of this chapter shall be subject to a fine of no more than \$500.00, or imprisonment in the county jail for a period not to exceed six months, or both such fine and imprisonment. Each day that a violation of this chapter continues is punishable as a separate and distinct offense. In addition to any penalty sought or obtained under

this chapter or other applicable law, the City Attorney may institute injunctive or other appropriate civil proceedings necessary to obtain compliance or to abate any nuisance resulting from violations of this chapter. (Ord. 18693 §17; March 27, 2006).

24.42.180 Severability.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this chapter. (Ord. 18693 §18; March 27, 2006).

24.42.190 Effective Date

This chapter shall take effect and be in full force fifteen days after passage, except for the inspection requirement in Section 24.42.130 which shall take effect and be in full force on May 29, 2006. No penalty shall be imposed against any owner of an OS for noncompliance with Section 24.42.130 until and after May 29, 2006. (Ord. 18693 §19; March 27, 2006).